ANNUAL REPORT

1999

THE MANITOBA HUMAN RIGHTS COMMISSION

LA COMMISSION DES DROITS DE LA PERSONNE DU MANITOBA

101-00983/

THE MANITOBA HUMAN RIGHTS COMMISSION

LA COMMISSION DES DROITS DE LA PERSONNE DU MANITOBA

1999 ANNUAL REPORT

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MINISTER OF JUSTICE
ATTORNEY GENERAL

Room 104
Legislative Building
Winnipeg, Manitoba, CANADA
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His Honour
The Honourable Peter M. Liba, C.M.
Lieutenant-Governor of Manitoba

Sir:

May it please your Honour, it is my pleasure to present to your Honour, the Annual Report of The Manitoba Human Rights Commission for the year 1999.

Respectfully submitted,

Gord Mackintosh

THE MANITOBA HUMAN RIGHTS COMMISSION

LA COMMISSION DES DROITS DE LA PERSONNE DU MANITOBA

The Honourable Gord Mackintosh
Minister of Justice and
Attorney-General
Legislative Building
Winnipeg, Manitoba
R3C 0V8

Sir:

We are pleased to forward to you, the Minister responsible for administration of The Manitoba Human Rights Code, the Annual Report of the Manitoba Human Rights Commission for the calendar year ending December 31, 1999.

Kenneth Filkow, Q.C.
Chair

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Function of The Manitoba Human Rights Commission

The Universal Declaration of Human Rights declares that: "All human beings are born free and equal in dignity and rights." In Manitoba, this ideal has been translated into law by *The Human Rights Code,* a provincial statute which prohibits unreasonable discrimination on the basis of ancestry, nationality, religion, sex, age, disability, or other group stereotypes.

The Manitoba Human Rights Commission is the agency responsible for anti-discriminatory activity under the provisions of *The Human Rights Code* in the areas of housing, employment, contracts and services available to the public. The Commission is authorized by *The Code* to mediate and investigate complaints of discrimination, to perform a public education function, or to issue binding opinions on human rights issues. Through these activities, the Commission attempts to reduce discrimination and promote social change leading to equal opportunity for all.

The jurisdiction of the Human Rights Commission is restricted to matters within the constitutional authority of the provincial legislature. Most activities carried on in the province fall within provincial jurisdiction; however complaints against certain federally regulated enterprises, such as airlines, railways and the federal civil service, should be filed with the Canadian Human Rights Commission. The staff of either commission will answer any questions regarding the appropriate jurisdiction to deal with a particular complaint and both the Winnipeg office of the Manitoba Commission and the Prairie Regional headquarters of the Canadian Human Rights Commission are co-located at 175 Hargrave Street.

The Board of Commissioners

Commissioners are selected to represent the geographic, cultural, social and economic profile of the province. They are appointed for three-year terms, on a staggered basis, and serve on a part-time basis. There are ten Commissioners, including a Chairperson and Vice-Chairperson.

The Board of Commissioners establishes the policies which determine the manner in which the professional staff administer the programs and activities of the agency. It is also the function of the Board to determine the appropriate disposition of all complaints, and to issue binding advisory opinions.

The Commissioners: (As at December 31, 1999)

		Term Expires
Kenneth Filkow Q.C.	Chairperson	2000
Cheryl Dumont,	Vice-Chairperson	2000
Amarjit Arneja	Commissioner	2001
Alfredo Arrojado	Commissioner	2000
Randal Smith	Commissioner	2001
Diane Vandewater	Commissioner	2001
Roland Boisvert	Commissioner	1999*
(Retired as a Commissioner in May/99)		
Robert Bone	Commissioner	1999
Philip Lee	Commissioner	1999
Piara Sharma	Commissioner	1999

Lionel Moore *(Replaced R. Boisvert in June 1999)

Minister:

The Honourable Gord Mackintosh, Minister of Justice and Attorney-General

The Commissioners

Kenneth Filkow Q.C. was re-appointed as Chairperson of the Commission for a third term. He combines his work as Chairperson with an active law practice as a senior partner of the *D'Arcy and Deacon* firm in Winnipeg. The emphasis of his practice is advice and counsel to business corporations. He is a Past President of *CASHRA*, the association of Human Rights Commissions across Canada.

Cheryl Dumont the Vice-Chairperson, is the Director of the Manitoba Metis Federation's Human Resources Training and Development Department. She has been a municipal councillor with the R.M. of Saint-Laurent, has served on many municipal committees and has represented the municipality on many boards. She is also involved with the *Société Franco-Manitobaine.*

Dr. Amarjit S. Arneja was born in Punjab, India and immigrated to Winnipeg in 1973. He has been a Commissioner since 1994. He is an Associate Professor of Medicine at the University of Manitoba and is active in clinical practice, teaching and research. He is past newsletter editor of the *Manitoba Tennis Association*, and has been a Director of the Association for several years. At present, he is a Director and Trustee of the *India Association of Manitoba.* He is actively involved in cultural, community and temple organizations.

Alfredo (Fred) Arrojado is an Insurance Consultant with Zurich Life Canada. He holds a B.A. in Business Administration. He is a Managing Partner of *Solutions 2000* and *Prosperity 2000 Consulting* in Winnipeg. He is Past President of the *Philippine Association of Manitoba*, and a Council Member of the *MEBAC/FBDB.* He is an active community volunteer, assisting new immigrants on settlement and immigration issues.

Roland Boisvert owns Falcon Auto Leasing Inc. He has been self-employed in the auto industry since 1976. He is also a consultant to small and medium-sized companies in Manitoba. He is very involved in the French community, and is a Past-President of the *Festival du Voyageur* and other organizations.

Robert Bone is a farmer who resides on the Sioux Valley Reserve. He was Chief of Sioux Valley for eight years. Previously, he was employed off-reserve for 14 years. Mr. Bone was elected to the *Brandon University Foundation Board* in 1992. He has been married to Brenda for 21 years and is the father of five

daughters. Currently he does volunteer work for the *Manitoba Association of Native Producers*

Philip Lee is a Research Chemist with the City of Winnipeg. He is a former Chairperson of the *University College Residents Committee*, is a senior member of the *Chemical Institute of Canada*, a Director of the *Chinatown Development Corporation* and the First Vice-President of the *Winnipeg Chinese Cultural and Community Centre*. Mr. Lee is married with three children.

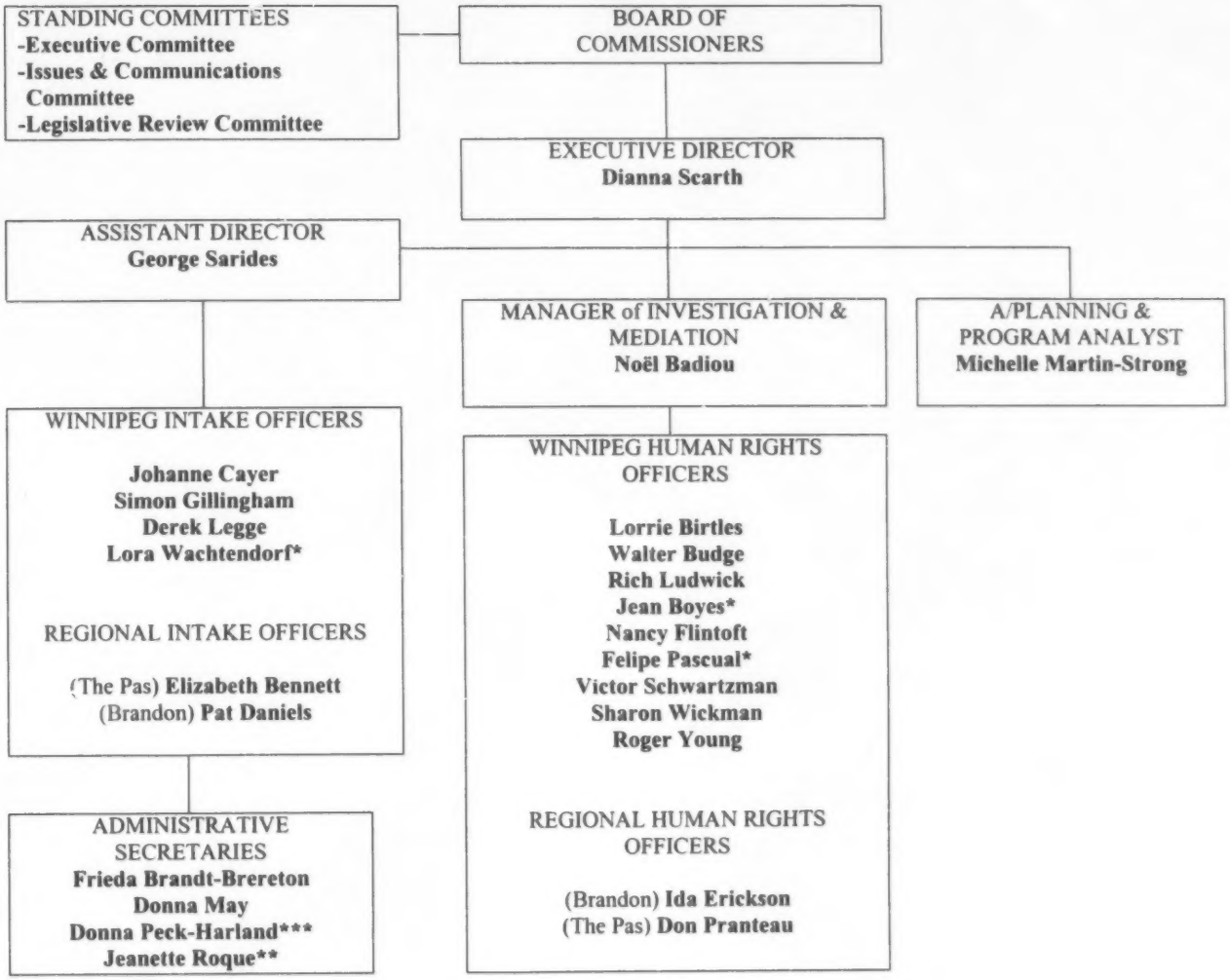
Piara Sharma is President and CEO of Adwest Promotions Inc. He has served on various ethnic organizations including *The Manitoba Inter-Cultural Council* and *The India Association of Manitoba.* At present he is the Chairman, Trust, *Hindu Society of Manitoba*. He is also, at the national level, Chairman of the Immigration and N.R.I. Affairs Committee of *The National Indo-Canadian Council*. Mr. Sharma is married with seven children.

Randal Smith lives in Brandon. Called to the Bar in 1980, he carries on a general practice under the name of Smith Legal. He is a Past President of *The Manitoba Bar Association*. Mr. Smith has also served as an Adjudicator under The Canada Labour Code, and as a Chair of the *Canada Pension Plan Review Tribunal.* He regularly writes articles on legal issues.

Dianne Vandewater obtained her Bachelor of Arts Degree in 1990 from the University of Manitoba, majoring in French. She resides in Winnipeg and is currently employed at Faneuil ISG Inc. as a Teleservice Representative. She is active in her church and in community events.

Lionel Moore wore more than one hat during a long career at the CBC. He is a broadcaster, media specialist, Employee Assistance Plan Administrator (EAP) and a labour relations consultant. As an announcer with the CBC, Lionel was engaged in a full range of staff announcer functions, which included news, sports and public affairs broadcasting, interviews, commentaries and the production of special events programs. Off-the-air duties involved representing the CBC at local and national events. Lionel was involved in the formation, implementation and administration of the CBCs' Employee Assistance Program, a joint Union-Management program run by a National board and executive and served as the National Co-facilitator for 8 years.

Manitoba Human Rights Commission Organization Chart



*** half time**
**** retired in June 1999**
*****retired in October 1999**

Overview of 1999 Activities

In early 1999 the staff and Board of the Commission met to continue the strategic planning process that had begun toward the end of 1998. This process resulted in our new Mission Statement - **(The Manitoba Human Rights Commission is mandated to achieving equality of opportunity and freedom from discrimination)** as well as the establishment of specific targets and action plans. The two major objectives that were identified were the reduction of the average time of investigations and the development of more effective and comprehensive public education programs. (Detailed information regarding the extent to which these objectives were reached during the year can be found in the sections of this report titled Complaints Process and Public Education Programs).

The single decision received from an adjudicator during the year, dealt with the important issue of whether religious institutions have the right to establish a particular religion as a "bona fide occupational requirement" for all of its employees. Adjudicator D. Knight dismissed the complaint filed by Esther Schroen against the Steinbach Bible College, which had terminated Ms Schroen's employment as a bookkeeper upon learning that she was not a member of the Evangelical Mennonite faith. (A summary of this decision is in the Legal Proceedings section of this report).

In February, the Commission held the first of 5 Employment Seminars, which were undertaken as a pilot project. They were day long seminars covering a range of human rights issues that often arise in employment situations, such as reasonable accommodation and harassment. Three seminars had been planned for the year, but the number was increased to 5 to accommodate the number of employers who wished to register for the program. In addition to these Employment Seminars, the number of Seminars offered by the Commission has been expanded to include a greater range of topics and to accommodate specific employers such as non-profit and/or sports organizations.

In September, the Commission hosted a meeting for staff from Human Rights Commissions from Saskatchewan, Alberta, B.C. and the Yukon. The meeting provided an opportunity to exchange ideas with others working in the human rights field and to discuss new approaches, such as case management strategies, to meet the challenges that all Commissions will face in the new Millennium. The staff of the Commission found it useful to discuss common concerns and experiences with their colleagues. The Commission was very pleased to have had the opportunity to host this "Western CASHRA" meeting.

In Manitoba there has been in recent years a huge increase in the number of housing units (usually life-leases rental units or condominiums) for which residency is limited to

"seniors" or "age 55 plus". On the face of it, the denial of the opportunity to live in a facility on the basis of age alone is discriminatory. This has formed the basis of complaints from people, not seniors, as well as inquiries from property developers who want to ensure that their buildings do not run afoul of human rights laws. As with many human rights questions, the issues are complex and require a balancing of competing interests. The Board considered implementing a policy that would assess facilities that excluded residents younger than 65 years. The assessment would determine whether special services were being provided to meet a bona fide requirement of that younger an age group. The Commission's Legislative Review Committee was asked to consider the issue and after a report is provided to the Board as a whole, a decision will be made.

Within the year the Commission also revised its policy on "family status" making it more limited in scope in keeping with recent decisions of human rights tribunals and courts. The new policy states that complaints will not be considered if they are framed on the basis of the identify of the individual rather than on family status.

In November, the Prairie Regional Office of the Canadian Human Rights Commission co-located its office with our central Winnipeg office at 175 Hargrave Street. The advantages of co-locating both human rights organizations include cost reduction through sharing facilities, and easier accessibility to human rights information for members of the public. The co-location provides a "one stop" service to Manitobans.

1999 also marked the year in which our Northern Office moved from the Provincial Building to the Otineka Mall, in order to be more accessible to community residents. The accessibility is also facilitated by Human Rights Investigator, Don Pranteau, who travels throughout the North, holding regular office days in various community organizations.

In terms of the nature and volume of complaints received during the year, the volume has remained fairly consistent within the past 3 years, in the range of 250 - 300 formal complaints. The majority of complaints arise in employment (54%) which is also a long standing pattern which led the Commission to develop its business seminars to focus on an area in which proactive educational activities are likely to have the greatest impact. As well, a high percentage of all settlements include an educational component, usually the employer agrees to attend one of the Commission's education programs. It seems that employers' interest in learning about human rights issues is often greatest when they have come directly in contact with the complaint process (although many settlements have been made at the pre-investigative stage so that no determination of the merits of a complaint will have been made).

The majority of complaints that have been received during the year were based on the grounds of Disability (29%) and Sex (including Pregnancy (29%). These figures are within the same range as those received within the previous three years. Although Ancestry / Native Origin (16.6%) account for a smaller proportion of complaints they still represent a significant number. The Commission also takes these figures into account when planning educational programs. Seminars have been expanded to include those which focus on the Duty to Accommodate (which is of critical importance in the area of disabilities) and Harassment (virtually all harassment complaints are based on gender or ancestry).

In addition to the goal of developing more comprehensive and effective public Education Programs, the second major goal identified during the Strategic Planning Process was to decrease the length of time taken to resolve complaints. Considerable progress was made, in part due to the expansion of mediation and conciliation programs that streamline complaint resolution procedures. In 1999 the Commission also targeted files which had been open for one year or longer as priorities . By years end, more than 90% of the "old" cases had been resolved and it is reasonable to expect that the Commission will achieve its goal of establishing an average time for investigations of six months by the end of 2000.

Overview of Complaint Process

Activities that were undertaken in 1999 to enforce *The Human Rights Code* included the development of a case management system that streamlines content of the procedures and offers a wider range of alternatives to investigation. The Intake Unit is the point of first contact with members of the public who wish to file a human rights complaint. After establishing that the concerns fall within the Commission's jurisdiction, the Intake staff will now attempt in some cases to resolve some matters informally, usually through telephone discussions. If pre-complaint conciliation efforts do not result in a resolution, or have not been considered appropriate to attempt, a written complaint will be prepared, registered, and sent to the Respondent.

The parties will usually be offered an opportunity to resolve their complaints at this stage through early resolution or face-to-face mediation sessions with one of the Commission's trained Mediators. Complaints not resolved at this stage will go through a full investigation, which often includes interviews and reviews of records and documents. Investigators review the evidence and make a recommendation to the Board as to whether the complaint should be dismissed.

The Board is free to accept, reject or modify an Investigator's recommendations. When complaints are not dismissed, following one final attempt to reach a settlement, the Minister of Justice will be asked to appoint an independent Board of Adjudication (a single adjudicator from an established roster). The adjudicator convenes a hearing that is open to the public, hears the evidence, and issues a written decision as to whether there has been a contravention of *The Code*.

Intake, Mediation & Investigation

Intake Activities:

The total number of Intake contacts for 1999 was 6,380. Approximately 8% of these contacts raised issues that relate directly to the Human Rights Code; another 12% of the contacts requested literature relating to human rights issues. When this figure is combined with the average of 3,000 "hits" per month on our Website (conservatively estimated at 500 visitors to the Website per month) it is clear that the Commission plays an important role in disseminating information to Manitobans in an accessible and easily understood manner. As well, over 5,000 contacts result in referrals to other departments or organizations.

An important option for resolving complaints quickly (the guideline is 30-days or less) and informally at the Intake level is our Pre-Complaint Conciliation Program.

Pre-complaint Conciliation attempts were made on 144 files, and a total of 77 resulted in a resolution that was satisfactory to both parties. In addition to the 77 complaints that were resolved, 28 files were closed when the Complainants decided not to pursue their complaints further, after reviewing the information that the Intake staff had obtained from the Respondent.

Pre-complaint resolution files:

Activity	# of Files	%
Employment	41	53.2%
Housing	8	10.4%
Harassment	11	14.3%
Services	16	20.8%
Reprisal	1	1.3%
TOTAL	**77**	**100%**

Grounds	# of files	%
Age	7	9.1%
Ancestry	9	11.7%
National Origin	1	1.3%
Disability	25	32.5%
Marital / Family	9	11.7%
Sex (incl. Pregnancy)	23	29.8%
Sexual Orientation	1	1.3%
Other	2	2.6%
Total	**77**	**100%**

The following examples of Pre-complaint resolutions achieved during the year illustrate the range of issues addressed and the types of remedies achieved:

- The Complainant, who had been missing increasing amounts of time leading up to a three week absence, alleged that her employment was terminated because of these pregnancy related absences. She determined that she had lost about two weeks work before finding other employment. The matter was resolved with a payment of 51 hours (her average bi-weekly earnings).

- The Complainant was alleging that the owner of the business subjected her to sexual harassment during the course of her employment. The owner of the business was contacted and the situation discussed. He agreed to apologise to the Complainant and assure her the behaviour would not be repeated. The owner also agreed to consider attending one of the Commission's seminars for employers. The Complainant confirmed the owner had apologised to her and promised the behaviour would not be repeated. Approximately 6 weeks later the Complainant was contacted as a follow-up. At this time she advised that conditions in the workplace had improved vastly in terms of the owner's behaviour towards her. She confirmed that she was satisfied with this outcome.

- The Complainant has Parkinson's disease, affecting his co-ordination. He reported that he (and a friend) was denied liquor service in spite of his advising the bartender of his disability and that he, himself, does not drink alcohol due to his medication. The

owner and the staff involved provided personal apologies and offered free non-alcoholic beverages for the next few months.

- The Complainant alleged that her Supervisor had made two gender offensive insults to her. The employer found no evidence to support her allegation, but provided a letter of apology for anything said, advising of a soon to be distributed harassment policy and Company attendance at the MHRC Employer Seminar.

- The Complainant, a single mother, alleged that her absences for childcare were the cause of her dismissal. The Respondent was contacted and, while there were apparently several reasons for her missing time, he agreed to provide her with a different position with fewer hours and if she proved reliable, she would be considered for full-time work. She accepted this offer.

- The Complainant alleged that in spite of two doctors' letters, her employer had not responded to her request to work only day shifts needed for management of her medical/psychological condition. Two days after this office contacted the employer, the Complainant was advised that she was to be found day shift work and was immediately placed on day shift.

- The Complainant was alleging that the employer had failed to take any action after harassment had been reported. The Complainant had complained to her Foreman about inappropriate pictures of women that were publicly displayed in the workplace. The employer was contacted and agreed to take immediate steps to have the pictures removed. The complainant expressed satisfaction with this outcome.

- The Complainant uses a power wheelchair and has a trained service dog as an assistant. When calling about a restaurant booking, she was told the dog was not permitted in the restaurant. The owner was called, extended an apology and a gift certificate to the Complainant.

Mediations and Investigations:

After a formal written complaint has been registered, in most instances the parties will be contacted within a few days to discuss the option of participating in a face-to-face mediation. Where mediation occurs and the complaint is resolved successfully, a resolution will be achieved within 60-days according to our guidelines. If the parties are not interested in a face-to-face mediation, or in negotiating a settlement prior to an investigation taking place, the complaint file will be referred to an investigator who will conduct a full investigation, which often includes interviewing a number of potential witnesses and reviewing relevant documentary evidence.

The following are settlements reached by way of mediation and/or settlement discussions, i.e. after a complaint has been filed. These examples have been selected to illustrate the nature of the allegations made by complainants as well as the range of remedies available. In some instances, the settlements outlined were achieved prior to investigation while in others, (as indicated), the parties reached a settlement following an investigation or after learning that the Board of Commissioners, had determined that there was sufficient evidence in support of the complaint such that the Board was not prepared to dismiss it. This type of "board directed mediation" is considered the last opportunity for settlement by the parties. A hearing before an adjudicator will usually be scheduled if no settlement can be reached at that stage.

Settlements:

- Brandon University has provided information to the Manitoba Human Rights Commission regarding the number of women that were hired by the university in faculty and administrative positions during the period from June 1, 1998 to August 30, 1999. That information was submitted pursuant to a settlement agreement, which stated that the Commission would assess the university's progress in dealing with the issue of the representation of women within its workforce. The publication of this information in the Commission's Annual Report was also a term of the settlement agreement.

  Brandon University has formally expressed its commitment to "...the objective of equal opportunities for women in the university community and, recognizing the systemic discrimination to which women have been subjected in the past, to improving the status of women at the university to achieve such equality."

Data that provides a national perspective with respect to hiring practices offers a useful contextual framework for assessing data from a single university. In that regard, the Commission obtained data that indicated that as of January 1997, the percentage of women within the National Occupational Classification ("NOC") 4121 ("university professors") in Canadian universities was 29%. In January 1997, only 21% of staff within that classification at Brandon University were women. However, by June 1998, the percentage of women within NOC 4121 had increased to 31% at Brandon University. We were informed that the opportunity had arisen to hire 29 new staff within this classification toward the end of 1997 and early 1998, largely as a result of early retirement incentives. The Commission was informed, as well, that a number of new recruitment methods had been undertaken to encourage qualified women to apply and in the result, 15 of the 29 "new hires" were women. Therefore, by May 1998, some progress had been made by the university toward reaching the objectives stated above. The progress continued during the period from June 1, 1998 to August 30, 1999 for which detailed hiring data was provided.

Such broad national figures provide a useful but somewhat limited picture. One of the important issues when assessing whether progress has been made regarding the employment of any under-represented group is to consider whether new hires are concentrated at a lower level (the familiar "glass ceiling" image). In a university setting, the number of tenure-track positions filled, as opposed to term or sessional positions, will demonstrate whether meaningful progress has been made in increasing the representation of women. Appointments to senior administrative positions are similar indicators of progress.

The Commission was advised that during the period from June 1, 1998 to August 30, 1999, Brandon University hired 18 women and 15 men to fill a total of 33 positions. Twenty-four of the new hires were within NOC 4121 ("university professors") while the remaining 9 positions were comprised of Administrative Associates, Instructional Associates and Professional Associates. The majority of new hires within the second group were women (6 out of 9) and 2/3 of those positions were term positions. There was an equal breakdown of 12 men and 12 women in the category "university professors", and 50% of each gender group were hired into tenure-track, as opposed to term positions. In order to reach the objective of creating equal opportunities for women in a university community, it is important that gains be made not only through term positions, but that opportunities are created for qualified women to occupy tenure-track positions as well.

In terms of senior administrative positions, the number of women who occupied positions as Deans had increased to 3 out of 6 by August 1999, a figure that represents a higher percentage of women than had been the case a few years earlier.

Whenever data is reviewed to consider issues relating to the under-representation of any group within a workforce, an important factor to take into account is the "availability rate" of qualified group members to fill positions within the workforce. When the "availability rate" is compared with actual numbers of the targeted group that are employed within the workforce under consideration, a low "utilization rate" may be an indicator of systemic discrimination in the absence of a non-discriminatory explanation. However, with a smaller employer such as Brandon University, some caution should be exercised when the utilization rate is calculated because of the small numbers within each faculty or department.

In January 1997, data collected showed that for academic employees at Brandon University, women were indicated to be under-represented in all departments with the exception of nursing. Under-representation may be attributable to a number of factors, including a low number of applicants from within an under-represented group, an issue that special recruitment efforts attempt to address. For Brandon University, the opportunity to hire new academic employees resulted in a higher percentage of women in several faculties. However, as of August 30, 1999, a number of departments and faculties continued to have low "utilization rates" i.e. the number of women within each faculty or department compared with the number of women within the external Canadian workforce who appeared qualified to teach in that area. It should be noted, however, that for some faculties or departments at Brandon University there were no opportunities between January 1997 and August 1999 to fill academic positions. It will be important that the University continue to employ special recruitment efforts when future vacancies arise. The University will be attempting to attract candidates from the same pool as other Canadian universities that are striving to address gender imbalance issues within their academic ranks, a factor that creates an additional challenge for a small rural university such as Brandon University.

In summary, Brandon University has made steady progress within the last 4 or 5 years and should be commended for the steps that have been taken to date. The university has agreed to continue to track information regarding new hires, promotions, and salaries in a gender-based format and to provide the information annually to be evaluated by the Manitoba Human Rights Commission. With the anticipated number of retirements of university staff across the country within the next few years, there will

no doubt be increased opportunities for the university to take further steps toward achieving its stated objective of improving the status of women at the university.

- The complainant had worked for 3 years in the service department of a car dealership. She reported alleged sexual harassment by a co-worker to her manager on two occasions. Although she was advised that there would be a meeting to discuss her concerns, she was not advised of the outcome of any discussions and was required to take "stress leave" shortly thereafter. The complainant then began maternity leave and learned that she had been terminated with two weeks salary in lieu of notice. The complainant alleged that the employer failed to take reasonable steps to terminate the sexual harassment at the time it was reported, or during her absence, and that rather then taking steps to prevent future harassment the employer had terminated her employment, contrary to *The Human Rights Code*.

  A resolution was achieved following a series of discussions with the parties. The agreement provided that the employer would: (i) give the complainant an acceptable letter of reference, (ii) participate in educational programs conducted by the Commission, and, (iii) enforce the company's Sexual Harassment Policy whenever management is made aware of a complaint.

- The complainant had been employed for approximately 5 years as a group home worker in a community treatment centre. She applied for a position as supervisor knowing that it had been designated as a "male role model" position, because the employer believed that it was a bona fide occupational requirement to limit applications to males. However, the complainant alleged she was qualified for the job in every other way and, had been discriminated against when it was awarded to a male applicant (although the complainant had been granted an interview).

  A face-to-face mediation took place. One of the Commission's mediators met with the employer's representatives and the complainant. Although the employer continued to assert that the subject supervisory position required a male for a number of reasons related to the clientele of the Centre, they had interviewed the complainant because there were other supervisory positions which were going to become available for which they felt she may be qualified. Under the terms of the mediated agreement: (i) future gender qualifications will be carefully considered and tailored to each specific situation, (ii) the parameters of hiring interviews will be communicated to applicants at the outset. This resolution, along with the promise that she would receive serious consideration for future supervisory opportunities, was acceptable to the complainant.

- The complainant was employed as a cook in a restaurant. After he had been employed for approximately 5 months, he was diagnosed with Hepatitis C and HIV. He disclosed his condition to his employer and a few days later received his last pay-cheque, and was advised that his employment had been terminated.

  Following settlement negotiations that took place prior to investigation, an agreement was reached whereby the employer would provide the following: (i) the complainant with lost wages of one month, and, (ii) a revised Record of Employment which reflected a change in circumstances, and, (iii) answers to inquiries from Employment Insurance reporting that the complainant had terminated the employer for medical reasons. This resolution was satisfactory to the parties.

- The complainant, a woman, worked for 3 years as a truck driver. She alleged that her supervisor was sexually harassing her. Her employment was terminated and she alleged that this had taken place in retaliation for her rejection of the supervisor's advances.

  A face-to-face mediation took place which resulted in an agreement which included: (i) a letter of apology from the employer to the complainant, (ii) an appropriate letter of reference, and, (iii) $6,000.00 in general damages (to compensate her for pain, suffering, and emotional distress). The employer also agreed that educational programs would be provided by the Commission to some of its managers.

- The complainant worked as a customer service representative. She became pregnant after she had worked for approximately 8 months and due to complications related to her pregnancy, was required to terminate the pregnancy shortly thereafter. The complainant was scheduled to be off work for a month but as a result of post-pregnancy depression, she was required to take an additional several days of sick leave. The complainant was advised at that point that her employment had been terminated. She alleged that the employer had failed to reasonably accommodate her pregnancy and circumstances related to her pregnancy (i.e. post-pregnancy depression).

  A Commission mediator discussed the issues with the parties and an agreement was reached to settle the complaint. The employer provided the complainant with $600.00 in general damages to compensate her for the loss of self-respect and dignity, and this was acceptable to the complainant in the circumstances.

- The complainant alleged that during the course of her employment she was subjected to repeated unwelcome sexual comments and advances.

  In response, the employer conceded that he made some of the comments as alleged, but he had not intended them as harassment, rather they were done "in jest".

  This matter was referred to an Investigator who interviewed several witnesses who confirmed that the complainant had clearly informed the employer that his conduct and comments were unwelcome. After this evidence was reviewed with the respondent, a settlement was negotiated wherein the respondent agreed to pay the complainant $3,450.00 as general damages.

Public Education Activities

In the preamble of the Manitoba *Human Rights Code* it states that "much discrimination is rooted in ignorance and education is essential to its eradication, and therefore it is important that human rights educational programs assist Manitobans to understand all their fundamental rights and freedoms, as well as their corresponding duties and responsibilities to others". It has been long understood by Legislators, the Courts and human rights practitioners that discrimination cannot be overcome by relying totally on the resolution of individual complaints. While persons who have been subjected to illegal discrimination must certainly have access to the remedies to which they are entitled under the law, there are some discriminatory practices, which are more effectively dealt with through education.

Human Rights legislation is intended to be "remedial" rather than "punitive" and that a primary function of the Human Rights Commission is to change public behaviour and attitudes. The importance of the educational and persuasive role of the Commission is clearly evident and it is within this context that the Commission undertakes its' public education activities.

The Commission Newsletter ("Human Rights From Manitoba") was distributed three times during 1999. Each edition, in a bilingual format was sent to over 1,100 individuals, firms and organizations and another 1,000 were distributed during public speaking and outreach activities.

The Manitoba Human Rights Commission Bilingual Website was continuously updated through out the year. The Website provides information, which is currently found in the brochures, and Fact Sheets that are available to the public, as well as legal proceedings information and statistics. From January to the end of December 1999, the Website recorded over 32,000 "hits" which represents a doubling from the previous year. The site can be found at "www.gov.mb.ca/hrc".

Business Education:

Commission policy continues to set priority on educational activities, which are proactive, and assist business and service providers in the development of policies and practices, which are likely to reduce instances of discrimination.

The Commission introduced a human rights law seminar designed specifically for employers in June 1998. The full-day seminar focused on what employers need to know to maintain a discrimination-free workplace and provides employers with information

regarding their rights and obligations under the Manitoba *Human Rights Code*. Topics included reasonable accommodation of pregnancy and disability; establishing a harassment-free workplace; questions that can be asked during pre-employment interviews; dealing with human rights complaints; dress code issues and issues relating to harassment.

Six full-day Employment Seminars were conducted during the year and dates are being confirmed in 2000 to continue to deliver these seminars as part of the Commission's ongoing public education activities.

In addition, a half-day seminar focusing on Reasonable Accommodation in the Workplace was piloted in September 1999. The seminar will be offered on a regular basis in the New Year. It will focus on employers who have a duty to take reasonable steps to accommodate employees - in what circumstances does duty arise and what rights and obligations does an employer have when it does.

During 1999, there was a steady demand for our services from the private sector. The main request for assistance again this year was in developing and implementing policies on sexual harassment. As a consequence a three and a half hour seminar has been developed that focuses on what conduct constitutes harassment under The *Human Rights Code*, and how employers can minimize their liability and develop a harassment -free workplace. The Harassment in the Workplace seminar will be offered as a part of the new specific seminars that will be offered in the year 2000.

Over 120 requests for service included the provision of speaking engagements, seminars and workshops for senior managers, managers and supervisors in government departments, not for profit agencies, unions and the business sector.

Staff continued to deliver a number of lectures or classes to various faculties in three universities and three community colleges. For some courses, Commission staff routinely present the human rights segment of the program. The majority of the students addressed are potential professional human resources personnel and, as such, they will have acquired a knowledge of human rights principles that should assist in preventing future discrimination.

A 16-hour introductory human rights program was developed for people who work with, or provide consultation to persons less likely to exercise their right to file a complaint was piloted in 1995. In 1999, the Human Rights Advocacy course was delivered in Winnipeg and in Churchill.

Schools:

Staff continued to respond to individual schools requesting speakers for students and staff. Several School Divisions as well as a number of individual schools requested assistance in developing policies to prevent harassment in the schools. In particular, a specific professional development session was conducted for members of the Manitoba Schools Counselors Association that focussed on harassment in the schools.

Schools regularly request speakers to assist students to understand human rights and utilize the Commission's printed resource material and video library, especially to mark the International Day for the Elimination of Racial Discrimination (March 21) or International Human Rights Day (December 10).

The Commission's Human Rights in the School Manual was re-promoted in 1999 to educators and as a result, efforts are underway to have the guidebook available on our Bilingual Website for educators, students, parents and other school participants. The Manual was first produced and distributed in 1991 and still is a valuable resource to assist individuals to review the extent to which their school meets human rights standards of school management as well as to facilitate the enhancement of human rights practices in schools.

Human Rights Day:

Commission staff assisted the Community Legal Education Association with the planning of its Annual Human Rights Conference. The Conference is held each year to recognize Human Rights Day on December 10th. This year the theme of the Conference was "Then they came for me - Expanding Human Rights Education". Each year, the Commission organizes events to mark International Human Rights Day, this year, the Commission held a public candle lighting ceremony in Winnipeg to recognize the day and to open the Community Legal Education Association's Human Rights Day Conference. The Honourable Peter Liba, Lieutenant Governor of Manitoba, addressed the assembly before lighting the symbolic Human Rights candle.

The Human Rights Commission Office in Brandon hosted an open house at the Provincial Building in recognition of International Human Rights Day. In addition, a candle-lighting ceremony took place, when City Councilor Marion Robinsong, who had previously been a Commissioner with the Commission, lit a candle and said a few words in honour of International Human Rights Day. lit the candle and gave remarks on behalf of the City of Brandon.

In The Pas, Commission staff attended an Amnesty International Lunch in, which acknowledged Human Rights Day and in Thompson, Commission staff provided remarks at a supper and candle lighting ceremony at the Thompson Multi-Culture Centre.

Journalism Awards:

Each year, the Commission is joined by the Winnipeg Press Club and the Community Legal Education Association in presenting awards for excellence in reporting human rights issues. The awards are made at a special ceremony held in conjunction with the Community Legal Education's Human Rights Day Conference. In 1999, Awards were given to the following:

Print - Large Circulation:

awarded to: Ed Feuer - (Winnipeg Sun) for his work: "Winnipeg won't buy line of anti-gay hate".

Print - Small Circulation:

awarded to: Shawna G. Jackson (Swan Valley Star and Times) for her work "Tom Tamblyn: seeing things in a new light".

Radio:

awarded to: Louise Charette (CBC - The Morning Show) for her work "No Safe Haven".

Television:

awarded to: John Paskievich (National Film Board/Vision TV) for his work "Gypsies of Svinia".

Honourable Mention:

Print – Small – Circulation:

awarded to: Scott Gibbons (Brandon Sun) for his work "Down in the dumps".

Advisory Opinions

The Human Rights Code provides for binding advisory opinions to be issued by the Manitoba Human Rights Commission. These opinions are to assist business entities, institutions, government departments or organizations who feel obliged to consider favouring certain group characteristics when hiring or making other decisions. In doing so, they do not wish to contravene *The Human Rights Code* and seek an advisory opinion from the Commission which would shield them from disciplinary complaints. The Commission must consider whether the merits of a particular initiative should gain a binding protective opinion. Any person who is responsible for the implementation of a practice or activity which is within the jurisdiction of *The Code* may apply for an advisory opinion. (An application form may be obtained from any of the offices of the Commission). When the application is received, it will be assessed to ensure that an advisory opinion would be appropriate and any concerns in this regard will be discussed with the applicant.

The Commission does not always issue an advisory opinion in response to an applicant's request. Informal advice or guidance from the Commission may, in some circumstances, be an effective way of addressing an applicant's concerns.

Sometimes the activity that is the subject of the application falls outside of the jurisdiction of the Commission. In other cases the application of *The Code* to a situation may be uncertain, and the Commission takes care to preserve the right of a person to file a human rights complaint with respect to the activity or practice.

The Commission issued one formal advisory opinion during the year. In addition 9 requests were dealt with informally. Two advisory opinion files were closed and 6 applications were pending at year end.

Manitoba Liquor Control Commission
Services/Age

Application:

The Manitoba Liquor Control Commission ("applicant") requested an advisory opinion with respect to its desire to implement the following proposed activities:

(a) post signs in the liquor stores of the Manitoba Liquor Control Commission, indicating that entry to minors unaccompanied by a parent, spouse or guardian would be denied.

(b) have the applicant's staff (including security personnel) demand identification verifying age of majority.
(c) deny entry into the applicant's Liquor stores of minors unaccompanied by a parent, spouse or guardian.
(d) evict minors unaccompanied by a parent, spouse or guardian from the applicant's liquor stores.

Background:

The Liquor Control Commission receives its powers to act form *The Liquor Control Act* R.S.M. 1988 c. L160. The Liquor Control Commission is charged with the administration of the Act including the general control, management and supervision of all liquor stores.

The applicant stated that its objective is to discourage underage drinking. The applicant added that if these proposed activities were not implemented, minors will continue to loiter in MLCC liquor stores and approach customers to purchase liquor for them. Also, by allowing minors into liquor stores, we are providing an opportunity and temptation to shoplift products which minors cannot purchase.

Opinion:

Section 13(1) of *The Human Rights Code* (Manitoba) prohibits discrimination with respect to service and accommodation unless the discrimination is based on a bona fide and reasonable cause that exists for the discrimination.

Section 13(2) states that "Nothing in Subsection (1) prevents the denial or refusal of a service, accommodation, facility, good, right, license, benefit, program or privilege to a person who has not attained the age of majority if the denial or refusal is required or authorized by statute in force in Manitoba".

Although *The Liquor Control Act* does not specifically address the limitation of access to minors on the actual premises of the applicant, several Sections of the *Liquor Control Act,* such as 49(4) (Proof of age), 91(1) (No minor employed), 93(1) (No Minor in cocktail lounge or cabaret), 93(2) (No Minor in dining room), 94(1) (No minors in licensed premises) and 121(1) (Unlawful sale to minors) appear to support a strong (and reasonable) public policy position that people who have not reached the age of majority should not have access to alcohol and places where alcohol is distributed.

When considering this public policy together with Section 13(2) of *The Code,* the exclusion of minors from the Liquor Commissions premises, in the manner proposed, does not appear unreasonable.

It is clear from the information provided by the applicant that the purpose of the applicant's proposal is to ensure that minors will not continue to loiter in the MLCC liquor stores and approach customers to purchase liquor for them. The above noted proposal is also designed to limit the minor's opportunity to shoplift products which the minor is prohibited from purchasing.

The Commission determined that the proposed activity to deny and refuse service to minors that were unaccompanied by a parent, spouse or guardian is not unreasonable discrimination. The Commission is of the view that this discrimination is necessary and shall be allowed as it complies with the strong public policy established by the Sections of *The Liquor Control Act* dealing with the restriction of access by minors to alcohol. Further, this activity is consistent with Section 13(2) of *The Code*, permitting discrimination against a minor when the denial or refusal based on age is required or authorized by a statute in force in Manitoba.

Legal Proceedings

In a decision released July 26, 1999, a human rights tribunal dismissed a complaint that had been filed by Ms Esther Schroen, with the Manitoba Human Rights Commission against the Steinbach Bible College. The Bible College had terminated the complainant's employment as an accounting clerk when it was learned that she was not a member of the Mennonite faith.

Donald R. Knight Q.C. was the independent adjudicator designated by the Minister of Justice to convene a hearing to decide whether the actions of the College contravened The Manitoba *Human Rights Code*. The hearing took place in January and February 1998.

Adjudicator Knight noted that "...this case involves the rights of one religious group and the religious freedom of an individual". The Bible College, a small, private, rural Manitoba school funded and operated by three Mennonite church groups, requires all employees to be members of the evangelical anabaptist Mennonite faith. All prospective employees are required to sign a Statement of Faith document, confirming their beliefs in the teachings of the faith. Ms Schroen had been raised in the Mennonite faith, and signed the statement which was attached to her application form. However, two days after she was hired as an accounting clerk, the Bible College learned from Ms Schroen that, at an earlier time, she had converted to the Mormon religion, and the Board terminated her employment on the basis of religious non-conformity.

The adjudicator found that the termination of Ms Schroen was solely based on "...her religious belief and religious association", and that the action taken by the Bible College was discriminatory. However, under the *Human Rights Code*, discrimination may be reasonable if there is a bona fide occupational requirement for it. As to this issue, the adjudicator noted that this was a unique setting, wherein the responsibilities of all support staff at the Bible College went beyond their written job descriptions. There was a basic premise that all employees would interact on matters of faith with students, including activities such as having students into their homes for Bible study sessions, attending the cafeteria to have meals with students, and being available to discuss faith matters with students. The adjudicator accepted the testimony of religious experts during the hearing that stressed that in a small religious college, the gap between faculty and staff is very narrow, and both groups are expected to actively create a kind of total Christian environment in keeping with the Mennonite tradition. The adjudicator also noted that Ms Schroen's Mormon beliefs were diametrically opposed to the teachings of the evangelical anabaptist Mennonite faith.

The published decision concludes that, considering the unique role of an accounting clerk at the Bible College, as well as the unique culture which exists within the Bible College, (its philosophy, mission, faith, beliefs, and ethics) the requirement that the

accounting clerk be of the Mennonite faith is a bona fide and reasonable requirement for that occupation in order to achieve the religious objects of the College.

The Manitoba Human Rights Commission has interpreted this decision as one which arose as a result of the unique situation at the Bible College such that all employees are expected involve themselves in the religious lives of the Bible students, including having students at their homes for Bible study sessions and being available anytime to discuss faith matters with the students. However, by reason of its continuing concern about the decision it will be formulating a policy position and will seek legislative amendments to ensure that religious belief is not utilized to wrongly justify a narrow and discriminatory hiring process.

Statistics

Formal Complaint Files

Activity	# of files	%
Employment	95	54.3%
Housing	8	4.6%
Harassment	35	20.0%
Services	32	18.2%
Reprisal	5	2.9%
Total	175	100%

Grounds	# of files	%
Age	18	10.3%
Ancestry	28	16.0%
National Origin	*(14) 4	2.3%
Disability	48	27.4%
Marital / Family	*(15) 13	7.4%
Political Belief	1	0.6%
Religion	*(5) 4	2.3%
Sex (incl. pregnancy)	*(58) 50	28.5%
Sexual Orientation	0	0.0%
Source of Income	*(3) 1	0.6%
Other	8	4.6%
Total	175	100%

* Note that some complaints include multiple grounds and the figure in "(#)" indicates the total number of grounds in all complaints filed.

Total 1999 Pre and Formal Complaints by Activity

Activity	# of files	%
Employment	136	54.0%
Housing	16	6.3%
Harassment	46	18.3%
Services	48	19.0%
Reprisal	6	2.4%
Total	**252**	**100%**

Total 1999 Pre and Formal Complaints by Grounds

Grounds	# of files	%
Age	25	9.9%
Ancestry	37	14.6%
National Origin	*(15) 5	2.0%
Disability	73	29.0%
Marital / Family	*(24) 22	8.7%
Political Belief	1	0.4%
Religion	*(5) 4	1.6%
Sex (incl. pregnancy)	*(81) 73	29.0%
Sexual Orientation	1	0.4%
Source of Income	*(3) 1	0.4%
Other	10	4.0%
Total	**252**	**100%**

*Note that some complaints include multiple grounds and the figure in "(#)" indicates the total number of grounds in all complaints filed.

Formal Complaint Files – Year End Summary – 1999

Formal complaints brought forward from 1998		245
Formal complaint filed in 1999		+ 175
	Total	420
Formal complaint files closed in 1999		- 230
Formal complaint files carried over to the 2000 calendar year		= 190

Status of Complaints carried over to the 2000 calendar year:

In Investigation	148
In Pre-Investigation Mediation	24
In Directed Mediation	18
Total	190

COMPLAINTS FILED

1990	1991	1992	1993	1994
245	*265*	*216*	*149*	*150*
1995	**1996**	**1997**	**1998**	**1999**
169	*218*	*308*	*262*	*252*

Disposition of Formal Complaints by Activity

Activity (# of Files)	Pre-investigation mediation	Early Resolution	Withdrawn/ Abandoned	Dismissed	Settled in Directed Mediation	Referred to Adjudication	Other **
Employment (122)	13	15	35	50	5	1	3
Housing (7)	o	4	0	1	1	0	1
Harassment (50)	10	8	14	10	3	2	3
Reprisal (9)	1	0	4	3	0	0	1
Services (47)	4	5	7	27	0	1	3
Other (1)	0	0	0	1	0	0	0
Totals (236)	28	32	60	92	9	4	11

Disposition of Formal Complaints by Grounds

Grounds (# of Files)	Pre-investigation mediation	Early Resolution	Withdrawn/ Abandoned	Dismissed	Settled in Directed Mediation	Referred to Adjudication	Other **
Age (17)	1	3	4	8	0	0	1
Ancestry (29)	3	1	8	14	1	0	2
National Origin (2)	0	0	0	1	0	0	1
Disability (63)	10	12	16	21	1	0	3
Marital / Family (25)	2	4	2	13	1	0	3
Political Belief (2)	0	0	0	2	0	0	0
Religion (1)	0	0	0	1	0	0	0
Sex (77)	11	12	24	21	6	2	1
Sexual Orientation(3)	0	0	0	3	0	0	0
Source of Income (2)	0	0	0	2	0	0	0
Other (15)	1	0	6	6	0	2	0
Totals (236)	28	32	60	92	9	4	11

****Note that the 11 'other' matters were in relation to matters where the proceedings were terminated as a result of the parties settling the matter without the Commission's involvement.**